

**COMMONWEALTH OF MASSACHUSETTS**  
**DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY**

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Notice of Inquiry Re: Competitive Market  
Initiatives

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D.T.E. 01-54 (Phase II)

**INITIAL COMMENTS OF BOSTON EDISON COMPANY,  
CAMBRIDGE ELECTRIC LIGHT COMPANY AND  
COMMONWEALTH ELECTRIC COMPANY, d/b/a NSTAR ELECTRIC**

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**I. INTRODUCTION**

Boston Edison Company, Cambridge Electric Light Company and Commonwealth Electric Company, d/b/a NSTAR Electric (“NSTAR Electric”), hereby file the following comments on competitive initiatives in Phase II of the above-referenced proceeding. This phase of the proceeding focuses on issues identified by the Department of Telecommunications and Energy (the “Department”) in its October 15, 2001 order regarding the elimination of regulatory barriers to retail electric competition in the Commonwealth. See Competitive Market Initiatives, D.T.E. 01-54-A at 37 (2001) (the “Phase I Order”).

**II. PROCEDURAL HISTORY**

The Phase I Order focused on issues outlined by the Department in its June 29, 2001 Notice of Inquiry/Generic Proceeding into Competitive Market Initiatives (the “NOI”) and discussed in a technical session held on July 24, 2001. In an effort to facilitate the development of a competitive retail electricity market, the Department directed each distribution company to provide licensed suppliers, upon their request, a list of the names, addresses, and rate classes of the distribution companies’ default service

customers (a “Customer Information List”). NOI at 6. In addition, the Department also directed each distribution company to establish a list of “Active Competitive Suppliers” that are licensed by the Department, have completed electronic data transfer testing with the distribution company and are “willing and able” to serve customers presently. Id. The Phase I Order expanded the categories of customer information to be included in the distribution companies’ Customer Information Lists to include: (1) historical usage information;<sup>1</sup> (2) service and mailing addresses; (3) customer contact persons, where available; and (4) meter-read cycles. Phase I Order at 11-18. The Department also expanded the Customer Information Lists to include standard offer customers. Id. at 23. In addition, the Department ordered that customer information be included on Customer Information Lists on an “opt-out” basis, i.e., customer information will be included on a Customer Information List unless a customer requests otherwise. Id. at 12.

In the Phase I Order and at a technical session held on November 14, 2001, the Department identified additional issues for comment. See Phase I Order at 37; Tr. 2, passim. On December 11, 2001, the Hearing Officer issued a memorandum outlining these issues as follows:

- should electric distribution companies perform the role of electricity brokers for their default service customers, e.g. via: (1) participation in an Internet-based auction; (2) obtaining direct authorization from default service customers to switch their service from default service to one offered by a competitive supplier; or (3) assigning default service customers to competitive suppliers?;
- should Customer Information Lists be expanded to include: (1) service delivery points; or (2) customers taking service from competitive suppliers?

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<sup>1</sup> The Department found good cause to grant an exception to its regulations requiring that historical usage information be shared only with suppliers after affirmative customer authorization. Phase I Order at 13; see also 220 C.M.R. §§ 11.00(12)(a) and 11.05(4)(a).

- should customer enrollment be facilitated via: (1) the inclusion of customer account numbers on Customer Information Lists; or (2) the elimination for some or all customer classes of the current requirement to include the first four characters of a customer's account name as a condition of enrollment?
- should electric distribution companies use the Internet for the transmission of customer information to and from competitive suppliers?
- what technical processes and consumer protections are necessary to implement the use of electronic signatures consistent with the requirements of the Electric Restructuring Act of 1997 (the "Restructuring Act")?

Competitive Market Initiatives, D.T.E. 01-54 (Phase II) (December 11, 2001 Hearing Officer's Memorandum at 2-3). NSTAR Electric's comments on these issues are outlined below.

### **III. COMMENTS ON PHASE II ISSUES**

#### **A. Summary of Comments**

In its Phase I Order, the Department described goals and challenges presented in this proceeding:

The Department's goal is to expand the range of competitive options that are available to consumers. Our challenge is to strike an appropriate balance between providing suppliers efficient access to information that would expand consumers' options and respecting consumers' privacy concerns.

Phase I Order at 9. NSTAR Electric shares the Department's goal of identifying and removing, where appropriate, regulatory barriers to the development of a vibrant competitive retail electricity market. The Department has determined that the compilation and distribution of detailed Customer Information Lists to suppliers will further that goal, and NSTAR Electric is working closely with the Department through the Phase I Working Group to develop operational details necessary to accomplish this in

the most effective and efficient manner. In conjunction with these directives, NSTAR Electric is developing a program to provide suppliers, upon the affirmative authorization of customers, detailed customer information via the NSTAR Electric web-site. This program would supplement the Department's customer information initiative and allow suppliers to access vital customer load and historical use data with the active support of interested customers, but without the added costs and uncertain benefits associated with Internet auctions.

In addition, consistent with the Department's policy of providing non-proprietary customer information to suppliers, NSTAR Electric also supports the inclusion of customer service delivery points on Customer Information Lists and the expansion of such lists to include customers taking service from competitive suppliers. Moreover, NSTAR Electric is discussing with the Electronic Business Transactions ("EBT") Working Group the details involved in transmitting customer information to suppliers via the Internet, rather than through a Value Added Network ("VAN"). These efforts should facilitate a secure and more efficient enrollment and data-exchange process between suppliers and distribution companies.

However, proposals designed to remove barriers to competition must continue to provide adequate consumer safeguards to protect customers against the possibility of unscrupulous market practices, such as unauthorized customer enrollment or "slamming." To this end, NSTAR Electric does not support listing customer account numbers on Customer Information Lists. As described below, because a customer's unique account number is not available (except from the customer), the submission of the account number by the supplier, as part of the enrollment process, is a good indication that the

customer has authorized the enrollment, and therefore, serves as an important protection against slamming. The reduction of this important consumer safeguard outweighs any incremental benefit to suppliers of having this information without having obtained it from customers. NSTAR Electric, however, supports the elimination of the current requirement that the first four characters of a customer's account name be included with a customer's account number in order to enroll a customer. This requirement has created unnecessary barriers to enrollment, particularly for larger customers with multiple accounts (because of various permutations of customer account names that exist within a distribution company's customer information systems). Accordingly, the removal of this requirement may facilitate customer enrollment without undermining consumer protections.

Lastly, regarding the Department's efforts to allow electronic signatures to be used when transacting within the retail electricity market, NSTAR Electric supports the adoption of the customer protections found in the Electronic Signatures in Global and National Commerce Act ("E-Sign"), 15 U.S.C. § 7001, et seq.

**B. The Department Should Allow Voluntary Programs for Distribution Companies to Facilitate Transactions in the Competitive Market**

1. Distribution Companies Can Facilitate Transactions Between Suppliers and Customers Without Adding Costs to Suppliers.

The Department seeks comment on whether electric distribution companies should perform the role of "electricity broker" for their default service customers. This issue has been raised by companies that have participated in "Internet auctions" whereby certain default service customers can permit their load to be offered to suppliers, on a supplier-neutral basis, via the Internet. See Tr. 2, at 158-195. It has been suggested that the Department select brokers to oversee the completion of transactions between

customers and interested suppliers and distribution companies would, in the near term, market to their customers the value in participating in such an auction. See id. at 162. However, at the Department's November 14, 2001 technical conference, some suppliers noted that development of these systems may add layers of costs to supplier-customer transactions that make such auctions less desirable, particularly for suppliers seeking to serve smaller customers. See id. at 179. Accordingly, the costs involved in developing such a system, coupled with reservations from suppliers and wholly speculative benefits, suggest that requiring the implementation of Internet auctions is not an appropriate means of facilitating competition.

However, efforts by distribution companies to broker transactions between customers and suppliers should not be dismissed by the Department. NSTAR Electric is developing a program to use its web-site to facilitate supplier-customer transactions, without adding costs for suppliers or customers. Through the program, NSTAR Electric would: (1) educate its customers about the potential benefits of participating in the competitive market through a mass-marketing campaign; and (2) seek permission from interested customers to release detailed consumption and load data to marketers so that marketers can target customers that may benefit from competitive supply.

The program's education effort would involve NSTAR Electric proactively sending its customers information about the possible benefits of taking supply from the competitive market and seeking their permission to share detailed customer information (name, address, phone number, voltage level, seasonal peak demand, historic data, load information (hourly, if available), and total energy consumption) with interested suppliers via the NSTAR Electric web-site. Suppliers could access the NSTAR Electric web-site



on a regular basis, free of charge, to see which customers are interested in being solicited. The web-site would contain a list of all customers who have expressed an interest in the competitive market and who have agreed to release their consumption history to suppliers. Further, the web-site would summarize the customer's characteristics to facilitate review by competitive suppliers. This type of program would drastically reduce marketing costs for suppliers by identifying customers who have an interest to be served by competitive suppliers and whose load characteristics would provide meaningful marketing opportunities.

In addition, this program would complement the Department's current effort to facilitate the development of the competitive market via the sharing of Customer Information Lists by allowing customers to opt-in to being "highlighted" on NSTAR Electric's web-site. NSTAR Electric is optimistic that this program will reinforce the Department's goal of encouraging customers to participate in the competitive market without adding costs to suppliers to market to such customers. The Department should encourage distribution companies to develop such cost-effective means of facilitating the development of the competitive market, without mandating the development, or types, of programs.

2. The Department Should Not Require Distribution Companies To Obtain Customer Authorization To Enroll Customers With Competitive Suppliers or To Enroll Customers Involuntarily.

The Department seeks comment on whether electric distribution companies should either: (1) obtain direct authorization to switch default service customers to competitive suppliers; or (2) assign such customers to competitive suppliers, presumably without such customers' authorization. Neither approach should be encouraged by the Department because of the paucity of suppliers interested in serving residential customers

in Massachusetts and the clear provisions of the Restructuring Act prohibiting the switching of customers without their affirmative consent.

The idea of distribution companies obtaining direct authorization from customers to switch suppliers apparently emanates from a program used by Consolidated Edison, Inc. (“ConEd”) in New York for customers who call the company complaining about high electric bills. ConEd’s customer-service representatives apparently give such customers the names of competitive suppliers who may supply them with electricity at lower prices. If a customer chooses, enrollment with a supplier could be accomplished during the phone call.

However, this program would not be appropriate for customers in Massachusetts. The reality is that, at this time, few suppliers are interested in serving the vast majority of customers that would take the time to call a distribution company with bill complaints, i.e., residential customers.<sup>2</sup> See Tr. 2, at 205-209. Such customers are primarily taking standard offer service from their distribution company and the majority of suppliers have not offered electricity to such customers to date at prices lower than offered under standard offer service. Moreover, as noted by Associated Industries of Massachusetts (“AIM”) at the November 14 technical conference, each supplier has different contract terms for serving customers. Id. at 214-215. Accordingly, requiring distribution companies to seek customer authorization to enroll customers undermines the ability of customers to choose a supplier in a voluntary, deliberative manner based on the price and contract terms negotiated directly and freely with the supplier. In addition, distribution companies should not be put in a position of recommending suppliers or advising

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<sup>2</sup> Indeed, NSTAR Electric’s Active Competitive Supplier List does not include any suppliers at this time that are offering to serve the residential market.

customers about savings that may or may not be available in the competitive market. Such a practice would put distribution in an untenable position and invite claims by suppliers that distribution companies are favoring one supplier over another, contrary to the neutral role that distribution companies should play in the competitive market.

Involuntary assignment of customers is also not appropriate because it would, in essence, institutionalize the “slamming” of customers. The Legislature clearly prohibited this practice as evidenced in the detailed provisions in G.L. c. 164, § 1F(8), as added by the Restructuring Act, that require affirmative customer authorization prior to their enrollment with competitive suppliers. Given these provisions, the Department does not have the authority to require the involuntary assignment of customers to competitive suppliers, nor should such a policy be advocated by the Department. The clear intent of the Restructuring Act is to promote customer choice in the provision of electricity services while preserving consumer protections. See G.L. c. 164, § 1(l). Accordingly, involuntary assignment of customers to competitive suppliers violates both the letter and spirit of the Restructuring Act.

**C. NSTAR Electric Does Not Oppose the Limited Expansion of Customer Information Lists**

The Department also seeks comment regarding whether Customer Information Lists should be expanded in two specific areas: (1) the inclusion of a customers’ service delivery point (i.e., whether the customers takes service via primary or secondary voltage); or (2) the inclusion of customers that receive service from competitive suppliers. Information regarding a customer’s service delivery point(s) provides information to suppliers regarding a customer’s line loss percentage and whether a distribution company is increasing or decreasing metered load in the context of reporting

such information to the Independent System Operator. NSTAR Electric stated at the November 14 technical conference that it does not oppose providing a customer's service delivery points on customer lists. Tr. 2, at 254. In addition, NSTAR Electric does not oppose including on Customer Information Lists information for those customers that are already being supplied by the competitive market. To the extent that the names of such customers are not on a Customer Information List, such customers may be denied information from suppliers that may offer a better opportunity than the supplier with which the customer is currently under contract.<sup>3</sup> Accordingly, customers currently taking supply from competitive suppliers should not be excluded from Customer Information Lists.

**D. Customer Account Numbers Should Not Be Included on Customer Information Lists Absent the Affirmative Consent of Customers.**

The Department seeks comment on two issues aimed at facilitating the enrollment of customers with competitive suppliers: (1) including customer account numbers on Customer Information Lists; and (2) eliminating the current requirement that the first four characters of a customer's account name be necessary to enroll a customer.

In order to enroll a customer (or to gain access to proprietary load or credit information), suppliers must submit to the distribution company, among other information, a customer's account number. If the account number is incorrect, the enrollment is rejected. In advocating for the release of customer account numbers, suppliers have argued that, even when a customer has authorized enrollment (or access to proprietary records), transcription errors occasionally occur that sometimes lead to

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<sup>3</sup> Customers must, of course, comply with reasonable restrictions on early termination of existing contractual commitments.

rejections of enrollments and labor-intensive and costly corrections by the supplier. According to suppliers, the inclusion of customer account numbers in Customer Information Lists will enable suppliers to cross-check the number more easily, thereby minimizing such errors and reducing the cost of enrolling customers.

The provision of customer account numbers to suppliers involves a conflict between two legitimate interests: reducing the cost of the enrollment process and protecting consumers from being enrolled without their consent. Under the existing system (whereby the account number may be obtained only from the customer), the submission of the customer's account number is a clear indication that the customer has affirmatively consented to the enrollment with the supplier. NSTAR Electric believes that protecting consumers from potential unscrupulous marketing practices must take priority over minimal reductions in enrollment costs resulting from occasional transcription errors.<sup>4</sup>

Through the Department's most recent directives in this proceeding, suppliers will be provided a substantial amount of customer information that will facilitate customer enrollment. Suppliers will be able to use Customer Information Lists to identify those customers who may benefit from competitive supply and target those customers for marketing. If the Department maintains its current policy of leaving customer account numbers off of Customer Information Lists, in order for suppliers to switch such customers to their services, they need only ask such customers to provide them with their account numbers (and read them back to customers to ensure accuracy) in order to enroll them successfully. Removing this step in the enrollment process by providing suppliers

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<sup>4</sup> Providing a customer's account number may result not only in slamming but also in authorized access to a customer's credit information with the distribution company.

such customers' account numbers only invites unscrupulous practices, which, in the long run, would undermine the development of the competitive market.

However, the Department has identified a legitimate means of streamlining the enrollment process. The Department should eliminate the current requirement to include the first four characters of a customer's account name in order to enroll a customer. Because the submission of the account number (provided by the customer) is a sufficient protection against slamming, the extra level of protection afforded by the first four characters of the account name causes unnecessary possibilities for error and could be eliminated without an adverse impact on customers.

**E. The EBT Working Group Is the Proper Forum for Determining the Most Efficient Use of the Internet for the Transmission of Customer Data Between Distribution Companies and Suppliers**

NSTAR Electric supports the implementation of the most efficient and cost-effective means of transmitting information to suppliers. There seems to be a consensus that Internet access is becoming the preferred gateway to data exchange. However, although the goal of providing information over the Internet can be achieved, the perception that the exchange of data can be accomplished over the Internet without any cost is unrealistic. The details and timing of moving from VAN to Internet access should be discussed and implemented on an industry-wide basis. To that end, NSTAR Electric is working with the EBT Working Group to identify issues that must be resolved in order to ensure consistency, reliability, security and cost minimization for migration to the Internet environment. NSTAR Electric recommends that the Department encourage the resolution of this issue through this process.

#### **IV. COMMENTS ON INTERNET-BASED CUSTOMER AUTHORIZATION**

In the Phase I Order, the Department stated that it would investigate the development of technical processes and consumer protections necessary to implement the use of electronic signatures consistent with the requirements of the Restructuring Act. D.T.E. 01-54-A at 37 (2001). Specifically, the Department is seeking to reconcile the provisions of the Restructuring Act, the Department's restructuring regulations at 220 C.M.R. § 11.00, et seq.; and the Electronic Signatures in Global and National Commerce Act ("E-Sign Act"), 15 U.S.C. § 7001, et seq., to determine how it may allow customers to use electronic signatures to effect enrollment or other authorizations in the context of the competitive electricity market.

In short, NSTAR Electric agrees with comments offered at the November 14 technical session that the Department adopt generally the consumer protections listed in § 7001(c) of the federal E-Sign Act. These protections include requirements that individuals seeking to use the Internet as a means of "signing" electronic documents be notified of the technical requirements necessary to save copies of signed electronic documents and other means of signature confirmation. Additional technical processes necessary to implement electronic signatures should be discussed in a working group of distribution companies, suppliers and consumer advocates. NSTAR Electric looks forward to participating in the Department's January 16, 2002 technical conference to discuss the issue in more detail.

**V. CONCLUSION**

NSTAR Electric appreciates the opportunity to submit comments in this proceeding and requests that the Department consider them in its deliberations regarding competitive initiatives.

Respectfully submitted,

**NSTAR ELECTRIC**

By Its Attorneys,

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